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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
CARL J. KUNASEK
Commissioner

IN THE MATTER OF COMPETITION)
IN THE PROVISION OF ELECTRIC)
SERVICES THROUGHOUT THE STATE)
OF ARIZONA)

DOCKET NO. U-0000-94-165

AEPCO, DUNCAN, GRAHAM AND
SULPHUR SPRINGS COMMENTS
ON PROPOSED RULES

In Decision No. 59870, the Commission referred for public comment Proposed Rules R14-2-1601 through R14-2-1616 concerning the introduction of retail electric competition in Arizona ("Proposed Rules"). By Procedural Order dated October 11, 1996, the Commission requested written comments on the Proposed Rules.

The Arizona Electric Power Cooperative, Inc. ("AEPCO"), Duncan Valley Electric Cooperative, Inc. ("Duncan"), Graham County Electric Cooperative, Inc. ("Graham") and Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC") (collectively, the "Cooperatives") submit these Comments in relation to the Proposed Rules. Because a variety of legal, procedural and other jurisdictional objections have repeatedly been called to the Commission's attention, the Cooperatives will limit these comments to a few specific issues concerning the Proposed Rules.¹

¹ Incorporated herein by this reference are the Comments of the Arizona Electric Power Cooperative, Inc. dated June 28, 1996 and the Comments of Arizona's Electric Cooperatives on the Draft Rules dated September 12, 1996.

1 R14-2-1604

2 On October 7, 1996, the Cooperatives filed Exceptions in
3 this docket. For convenience, a copy of those Exceptions is
4 attached hereto and incorporated herein by this reference.

5 R14-2-1604.H establishes a waiver mechanism for
6 cooperatives to petition to modify the competitive schedule "so as
7 to preserve the tax exempt status of the cooperative or to allow
8 time to modify contractual arrangements pertaining to delivery of
9 power supplies and associated loans." In the Cooperatives'
10 Exceptions, they suggested an alternate reporting approach which
11 would save both Commission and cooperative resource in addressing
12 these tax exemption, mortgage default, impairment of contract and
13 other issues. The Cooperatives feel this alternative is preferable
14 to the current version of the Proposed Rules. It will allow them to
15 focus their efforts on resolving these issues and will keep the
16 Commission fully informed as to their efforts.

17 Therefore, the Cooperatives request that the Commission
18 delete cooperatives from the definition of "Affected Utilities" in
19 R14-2-1601.1 and substitute the following language for the current
20 version of R14-2-1604.H:

21 H. By December 31, 1997, Arizona electric
22 cooperatives shall file with the Commission a
23 report describing the status of their efforts
24 to address and resolve tax exemption,
25 contractual and federal financing issues which
26 affect their ability to participate in a
competitive market. If such issues have been
resolved by that date, such report shall
include a proposed timetable under which the
service territories of the electric

1 cooperatives may be opened to competition as
2 described in this article. An electric
3 cooperative may at any time elect to
participate in this article pursuant to the
provisions of R14-2-1611.B.

4 R14-2-1604 also establishes a phased timetable for
5 introduction of competition. The rule should be modified to make it
6 clear that (1) customers electing to participate in the competitive
7 market should bear the costs associated with that decision and (2)
8 its requirements are subject to available transmission capability.

9 As to these issues, to the extent that load is supplied by
10 generation external to a system, it impacts the ability to provide
11 reliable service to all customers. Each system has a limit to its
12 import capabilities. A certain amount of online generation is
13 required to provide reactive and/or real support to the transmission
14 system which restricts the ability to import competitive resources.
15 Also, the system may not have import capability because of
16 transformer, substation and other transmission constraints.
17 Although these limitations impact all systems, they are of
18 particular concern to the Cooperatives because of the limited
19 facilities which are in place to serve their less densely populated
20 and widely disbursed service territories.

21 As R14-2-1604 is currently phrased, a competitive supplier
22 might argue that an Affected Utility had not "made available" the
23 required percentage of its retail demand if, because of system
24 capacity constraints, a smaller percentage than the mandated targets
25 were capable of receiving competitive service. For example, an
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1 Affected Utility might only be physically able to make available
2 40%, not 50%, of its retail peak demand by January 1, 2001 because
3 of capacity constraints. The competitive supplier might then argue
4 that the Proposed Rules require the Affected Utility and its
5 customers to pay for system modifications. The Proposed Rules
6 should be changed to make it clear that it is the electric service
7 provider or competitively served customer who must bear the cost of
8 overcoming such system limitations, if necessary, not the Affected
9 Utility or its customers.

10 To address this issue, a new definition should be added to
11 R14-2-1601 as follows:

12 "Available Transmission Capability" has the
13 meaning accorded it by Federal Energy
14 Regulatory Commission Order 888 (III FERC
Stats. & Regs. ¶ 31,036, 1996) incorporated
herein by reference.

15 The phrase "Subject to Available Transmission Capability" should
16 then be added at the beginning of paragraphs A, B and D in R14-2-
17 1604.

18 Finally, the following new paragraph I should be added at
19 the conclusion of R14-2-1604:

20 I. Any consumer which elects to
21 participate in the competitive market shall pay
22 all costs attributable to such election
including but not limited to special metering
costs and any costs required to relieve
transmission or distribution constraints.

23 These modifications avoid ambiguity and make clear that the
24 competitive consumer or competitive supplier will shoulder costs
25 created by allowing competition. The modifications are also
26

1 consistent with this Commission's Finding of Fact No. 4 in Decision
2 No. 59870: "It is the expectation of the Commission that the rates
3 for Standard Offer service will not increase, relative to existing
4 rates, as a result of allowing competition."

5 R14-2-1606

6 R14-2-1606.A requires Affected Utilities until some
7 undefined future date to stand ready to provide all customers in
8 their service areas Standard Offer service. Thus, even though a
9 large industrial, commercial or residential load has left a system,
10 the Affected Utility will still have to plan for, finance and secure
11 generation, transmission and distribution resources or facilities
12 necessary to serve that load. For example, if 10 MW of commercial
13 load leaves the system in 1999, the Affected Utility nonetheless
14 will have to continue to incur the cost necessary to accommodate
15 that load until the Commission determines that competition has been
16 implemented for the commercial class of consumers.

17 From society's standpoint, this obviously is an
18 inefficient use of resources. For this time period, both the
19 competitive generation supplier and the Affected Utility will be
20 expending resources to serve the same customer. From the
21 competitive customer's standpoint, it offers tremendous
22 opportunities to "game" the system because that customer may move
23 back and forth based upon the relationship between marginal and
24 average embedded cost. The requirement also places Affected
25 Utilities at a competitive disadvantage. Their Standard Offer rates
26

1 must include these cost increments, while competitive suppliers are
2 subject to no similar obligation. Finally, the provision shifts
3 costs to the Standard Offer consumer which must bear the expense
4 associated with maintaining system capability on the mere chance
5 that the competitively served customer will sometime want to return.

6 The Cooperatives recognize that this is a difficult and
7 complex issue. For that reason, they suggest that the provisions of
8 R14-2-1606.A are simply premature. That paragraph should be deleted
9 in its entirety and this subject should be addressed in the
10 workshops already contemplated by R14-2-1606.I. This issue could
11 then be dealt with as part of the Commission's consideration of
12 specific Standard Offer and/or Unbundled Service tariffs.

13 R14-2-1601.4

14 FERC Order 888 acknowledges that "local facilities" are
15 subject to state jurisdiction. For that reason, we suggest that the
16 definition of "distribution service" use that same term of art as
17 follows:

- 18 4. "Distribution Service" means the delivery
19 of electricity to a retail consumer
20 through wires, transformers, and other
21 devices that are classified as local
22 facilities not subject to the jurisdiction
of the Federal Energy Regulatory
Commission; Distribution Service excludes
meters and meter reading.

23 R14-2-1607

24 Paragraph A requires Affected Utilities to take feasible,
25 cost-effective steps to mitigate Stranded Cost by means such as
26 expanding wholesale or retail markets. One of the many problems

1 with the Commission's current timetable is that most of the
2 surrounding states whose markets would provide these opportunities
3 will not be open to Arizona's utilities. Yet, those states'
4 utilities will be able to sell in Arizona, thus exacerbating the
5 Stranded Cost problem. For this reason alone, the Commission should
6 delay action on rules adoption, proceed further with the Proposed
7 Rules' refinement and seek coordinated, regional solutions that will
8 not inherently disadvantage this state's utilities and their
9 customers.

10 Paragraphs D and I list factors as to Stranded Cost which
11 are wholly inappropriate. For decades, the Cooperatives have
12 faithfully adhered to the "regulatory compact" and expended
13 considerable sums to assure reliable, reasonably priced power for
14 their service territories. These are vested property rights under
15 Arizona's constitution and statutes which can't be disturbed by this
16 Commission. At a minimum, those vested rights certainly can't be
17 diminished by factors such as the "impact of Stranded Cost recovery
18 on the effectiveness of competition."

19 Factors 1, 4, 8 and 9 should be deleted from paragraphs D
20 and I of R14-2-1607.

21 R14-2-1611

22 Affiliates of non-Affected Utilities should also be
23 prohibited from competition unless they meet this Rule's conditions.
24 For that reason, we suggest the following change to R14-2-1611:

- 25 A. The service territories of Arizona
26 electric utilities which are not Affected

1 Utilities shall not be open to competition
2 under the provisions of this Article, nor
3 shall Arizona electric utilities which are
4 not Affected Utilities (or their
5 affiliates as that term is defined in R14-
6 2-801.1) be able to compete for sales in
7 the service territories of the Affected
8 Utilities.

9 B. An Arizona electric utility (or its
10 affiliate as that term is defined in R14-
11 2-801.1), subject to the jurisdiction of
12 the Commission, which is not an Affected
13 Utility may voluntarily participate under
14 the provisions of this Article if it makes
15 its service territory available for
16 competing sellers, if it agrees to all of
17 the requirements of this Article, and if
18 it obtains an appropriate Certificate of
19 Convenience and Necessity.

20 D. An Arizona electric utility (or its
21 affiliate as that term is defined in R14-
22 2-801.1), not subject to the jurisdiction
23 of the Commission, which is not an
24 Affected Utility, may voluntarily
25 participate under the provisions of this
26 Article if it makes its service territory
available for competing sellers, if it
agrees to all of the requirements of this
Article other than any requirements to
obtain a Certificate of Convenience and
Necessity, if adequate enforcement
mechanisms can be established, and if all
other Affected Utilities consent in
writing.

CONCLUSION

The Cooperatives request that the Commission modify the
Proposed Rules as set forth above.

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1 RESPECTFULLY SUBMITTED this 8th day of November, 196.

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1 Original and 10 copies of the
2 foregoing were filed this 8th
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5 Copy of the foregoing hand-delivered
6 this 8th day of November, 1996, to:

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